

1 AARON D. FORD
2 Attorney General
ROST C. OLSEN, Bar No. 14410
3 Deputy Attorney General
State of Nevada
4 Public Safety Division
100 N. Carson Street
Carson City, Nevada 89701-4717
5 Tel: (775) 684-1209
E-mail: rolsen@ag.nv.gov

6 *Attorneys for Defendants*
7 *Mark Boyd, William Gittere,*
and Evelyn Rodriguez

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9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11 JAQUAN BARNES,

12 Plaintiff,

13 v.

14 WILLIAM GETTIERR, et al.,

15 Defendants

Case No. 3:18-cv-00390-MMD-CLB

16 **MOTION FOR EXTENSION OF TIME TO**
17 **FILE NOTICE AS REQUIRED IN THE**
18 **MINUTE ORDER (ECF No. 20)**

19 Defendants Mark Boyd, William Gittere, and Evelyn Rodriguez, by and through counsel, Aaron
20 D. Ford, Attorney General of the State of Nevada, and Peter E. Dunkley, Deputy Attorney General
(DAG), hereby submit their Motion for Extension of Time to File Notice as Required in ECF No. 20.
This Motion is based on Federal Rule of Civil Procedure 6(b)(1)(B), the following Memorandum of
Points and Authorities, and all papers and pleadings on file in this action.

21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 Defendants respectfully request until close of business on Friday, January 10, 2020 to file the
23 Notice called for in ECF No. 20 explaining why the Office of the Attorney General does not accept
24 service on behalf of Defendant Richard C. Adams. At the time of entry and service of the Minute Order
(ECF No. 20) on December 19, 2019, undersigned counsel inadvertently neglected to ensure the
25 deadline was properly noted on his calendar. Decl. of Rost C. Olsen, ¶ 5.

26 This matter subsequently came back to the undersigned's attention on January 6, 2020 when
27 Court staff reached out to him to inquire as to the status of the Notice. *Id.* at ¶ 6.

1 The requested extension of time will afford Defendants adequate time to properly brief the
2 Notice and submit it to the Court.

3 Federal Rule of Civil Procedure 6(b)(1) governs extensions of time and provides as follows:

4 When an act may or must be done within a specified time, the court may,
5 for good cause, extend the time: (A) with or without motion or notice if
6 the court acts, or if a request is made, before the original time or its
extension expires; or (B) on motion made after the time has expired if the
party failed to act because of excusable neglect.

7 “[E]xcusable neglect” is an “elastic concept.” *Pioneer Inv. Servs. Co. v. Brunswick Assocs.*, 507 U.S.
8 380, 392, 113 S.Ct. 1489, 1496, 123 L.Ed.2d 74 (1993). The determination of what is “excusable” is “at
9 bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission.”
10 *Id.* at 395, 113 S.Ct. at 1498. “Cases should be decided upon their merits whenever reasonably
11 possible.” *Eitel v. McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986).

12 In this case, Defendants’ failure to timely file and objection or a request for an extension is due
13 to excusable neglect. *See Decl. of Rost C. Olsen, ¶¶ 1-6*. The shortage of support staff during the
14 holiday season in which the Minute Order was entered and undersigned’s inadvertent oversight led to
15 the failure of placing this particular deadline on his calendar. *Id.* at ¶¶ 4-6. This failure, in combination
16 with managing other competing deadlines, resulted in undersigned’s inadvertent failure to timely
17 prepare and submit the Notice. *Id.* at ¶¶ 4-6. The requested extension will permit undersigned an
18 opportunity to properly brief and file the Notice. Defendants assert that the circumstances are such that
19 excusable neglect is present which would warrant the requested extension of time and will facilitate the
20 policy of a decision on the merits. *See id.* at ¶¶ 4-6; *see also Eitel*, 782 F.2d at 1472.

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1 For these reasons, Defendants respectfully request an extension of time until close of business
2 on Friday, January 10, 2020, to file the Notice required in ECF No. 20.

3 **I. EXHIBIT A. Declaration of Rost C. Olsen**

4 DATED this 6th day of January, 2020.

5 AARON D. FORD
6 Attorney General

7 By: /s/ Rost C. Olsen
8 ROST C. OLSEN, Bar No. 14410
9 Deputy Attorney General

10 *Attorneys for Defendants*

11 **IT IS SO ORDERED.**

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13 U.S. MAGISTRATE JUDGE

14 DATED: 1/7/2020

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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 20th day of January, 2020, I caused to be served a copy of the foregoing, **MOTION FOR EXTENSION OF TIME TO FILE OBJECTION TO MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**, by U.S. District Court CM/CFE Electronic Filing to:

Roger Randolph, #1086077
Care of LCC Law Librarian
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419
lcclawlibrary@doc.nv.gov

Conrad L. Smith
An employee of the
Office of the Attorney General

EXHIBIT A

Declaration of Rost C. Olsen

EXHIBIT A

DECLARATION OF ROST C. OLSEN

I, Rost C. Olsen, Esq., declare the following:

1. I am a Deputy Attorney General (DAG) for the Office of the Nevada Attorney General (OAG). I work in the Carson City location.

2. On December 19, 2019, my legal assistant and I received the Court's Minute Order, ECF No. 20, through the Court's e-filing system.

3. Generally, when we receive orders from the Court, my legal assistant places deadlines from those order in my electronic work calendar, and I review orders shortly afterward to confirm any deadlines are on my calendar.

4. During the time the Minute Order came in, our office was short on staff due to the holiday season, and the January 2, 2020 deadline was not placed on my electronic work calendar.

5. Subsequently, I inadvertently forgot to confirm whether the January 2, 2020 deadline for the Notice, as contained in the Minute Order, was placed on my calendar.

6. Due to this inadvertence, I did not relearn of this deadline until January 6, 2020 when Court staff contacted me to inquire of the status of the Notice.

Pursuant to 28 U.S.C. § 1746 Declarant certifies, under penalty of perjury, that the foregoing is true and correct.

Executed this 6th day of January, 2020 in Carson City, Nevada.

/s/ Rost C. Olsen
Rost C. Olsen